

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>WILLIAM BOYLE</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 199,183
<b>ELEK-TEK, INC.</b>	)	
Respondent	)	
AND	)	
	)	
<b>ATLANTIC MUTUAL INSURANCE COMPANY</b>	)	
Insurance Carrier	)	

**ORDER**

Claimant appealed the Award entered by Administrative Law Judge Robert H. Foerschler on July 17, 1996. The Appeals Board heard oral argument by telephone conference on January 16, 1997.

**APPEARANCES**

Claimant appeared by his attorney, Stanley L. Wiles of Kansas City, Missouri. Respondent and its insurance carrier appeared by their attorney, Denise E. Tomasic of Kansas City, Kansas. There were no other appearances.

**RECORD AND STIPULATIONS**

The Appeals Board has considered the record and adopted the stipulations listed in the Award.

### ISSUES

The Administrative Law Judge denied claimant workers compensation benefits finding the claimant failed to prove he suffered a personal injury by accident that arose out of and in the course of his employment with respondent. That is the single issue before the Appeals Board for review.

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record, considering the briefs, and hearing the arguments of the parties, the Appeals Board finds as follows:

Claimant alleged he injured his low back while carrying two computers at the same time while employed as a sales person at respondent's retail store located in Lenexa, Kansas. Claimant indicated the accident occurred during normal work hours sometime in the first week of February 1995.

In addition to the medical evidence admitted into the record, claimant presented the testimony of Eleanor Yvonne Mallinson, cashier employed by the respondent; Larry Boyle, claimant's brother; and Rosie Boyle, claimant's wife. Respondent presented the testimony of Lori McAdam, administrative assistant, who was responsible for employee's workers compensation claims; James Zehren, store manager; and Kyle Drake, sales manager, who was a fellow employee of claimant at the time of the alleged accident.

Claimant has the burden to prove by a preponderance of the credible evidence that he injured his low back at work. See K.S.A. 44-501(a); K.S.A. 44-508(g); and also Box v. Cessna Aircraft Co., 236 Kan. 237, 689 P.2d 871 (1984). The Appeals Board finds from a review of the testimony of the witnesses presented by both the claimant and the respondent, the outcome of this case hinges on the credibility of the witnesses. The Appeals Board concludes the Administrative Law Judge's finding that claimant failed to prove he suffered a work-related injury, implicitly is a finding that claimant was not truthful. Therefore, since the Administrative Law Judge had the opportunity to personally assess the claimant's credibility as he testified in person before the Administrative Law Judge, the Appeals Board finds some deference should be given to the Administrative Law Judge's findings and conclusions in this regard. Accordingly, giving some deference to the Administrative Law Judge, the Appeals Board finds the Award of the Administrative Law Judge finding claimant failed to establish that he suffered a work-related injury should be, and is, affirmed.

All other findings and conclusions made by the Administrative Law Judge in his Award are adopted by the Appeals Board.

**AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Robert H. Foerschler dated July 17, 1996, that found claimant had failed to establish that he suffered a work-related accidental injury on February 1, 1995, should be, and is hereby, affirmed in all respects.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of April 1997.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Stanley L. Wiles, Kansas City, MO  
Denise Tomasic, Kansas City, KS  
Robert H. Foerschler, Administrative Law Judge  
Philip S. Harness, Director